(EMB-7337)
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Our File No. 1967-1001

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
TRENTON DIVISION

INTERACTIVE MEDIA ENTERTAINMENT AND GAMING ASSOCIATION, Inc., a not-for-profit corporation of the State of New Jersey,	:	CIVIL ACTION
Plaintiff,	:	Case Number 07-2625 (MLC)
-vs-	:	CERTIFICATION SUPPLEMENTING RESPONSE TO OPPOSITION TO MOTION AND REQUEST FOR TEMPORARY RESTRAINTS.
ALBERTO GONZALES, Attorney General of the United States, THE FEDERAL TRADE COMMISSION and THE FEDERAL RESERVE SYSTEM,	:	
Defendants.	:	

EDWARD LEYDEN, of full age, upon his oath hereby deposes and says:

1. My name is Edward Leyden, I am an attorney at law of the District of Columbia, in good standing, and I am over eighteen (18) years of age. I am under no duress or undue influence in making this affidavit in support of Plaintiff iMEGA's application for issuance of an order to show cause why the court should not restrain the implementation of the UIGEA.

Dockets.Justia.com

2. My background is in regulation, contracting, legislation, review and advice to clients in the areas of banking and finance for clients throughout the world, and in particular in relation to Internet based financial transactions.

3. Plaintiff, Interactive Media Entertainment and Gaming Association, Inc. (hereinafter referred to as "iMEGA") is a corporation formed under the laws of the State of New Jersey, with its office and principal place of business at 1850 K Street, N.W., International Square, Suite 390, Washington, DC 20006. iMEGA is a not-for-profit corporation duly formed and constituted under the laws of the State of New Jersey and I am its President.

4. As previously noted, iMEGA represents the interests of persons and companies, both domestic and foreign, which provide Internet interactive entertainment or "gaming." "Interactive" entertainment is entertainment conducted over the Internet between individuals with access to a personal computer or laptop and server based programs belonging to individuals or companies, where the activity is on-going and conducted in real time between the person and the program. iMEGA engages in the national and international collection and dissemination of information and advice regarding such services, the legislative and legal landscape affecting such services, and liaison between its members and members of the general public in various media, including speech, print and Internet media. iMEGA itself does not engage in any interactive electronic gaming by and through the Internet as hereinafter described.

5. Among the category of industry participants represented by iMEGA are so-called "affiliate marketers"—many of which are based and operate from within the borders of the United States. These "Affiliates" operate and maintain web sites and/or

"portals" that provide visitors with access to a variety of informational content regarding gaming and from which, by the use of "hyperlinks" and similar technologies, visitors may, by a series of "mouse clicks," be directed to Internet gaming web sites.

6. Under 31 *U.S.C.* §5362(1)(D)—which was enacted as part of the UIGEA—the activities of "Affiliates" in providing "information and instructions as to the establishment or usage of funds" in connection with Internet gaming (either overtly or implicitly through the operation of hyperlinks)—conduct which before the UIGEA was lawful—may now be construed by the government as constituting a "bet or wager" that, under 31 *U.S.C.* §5362(10), could well be deemed to be punishable as the federal crime of "Unlawful Internet Gambling."

7. Similarly, 31 *U.S.C.* §5366 introduces separate and distinct criminal sanctions for the conduct of accepting financial transactions for unlawful Internet gambling, thereby creating and defining a wholly new predicate criminal act.

8. Thus, the UIGEA has rendered illegal activities that before the enactment of the statute were either perfectly legal or, at the very least, not directly defined or recognized under U.S. law as distinct criminal acts.

9. Since my last Affidavit in support of iMEGA's motion for issuance of temporary restraints against the UIGEA and promulgation of regulations under UIGEA, iMEGA has monitored the official websites of the Federal Trade Commission and the Federal Reserve Board as well as the Federal Register and the Code of Federal Regulations, on a nearly daily basis.

10. No regulations under UIGEA, particularly 31 *U.S.C.* §5346, have been proposed by the Defendant Federal Trade Commission, the Defendant Federal Reserve

Board or the Department of Justice as of today, September 10, 2007. There has been no publication of them on any official website, although both the Federal Trade Commission and the Federal Reserve Board have official websites announcing news, articles, speeches and regulations.

11. iMEGA of course monitors the Internet and the World Wide Web for any news which affects its members and the interactive media industry. That monitoring shows that the United States has continued its efforts under coordinate laws to stamp out Internet Gambling. As reported in Reuters, a British Internet Gambling company named PartyGaming reported a pre-tax loss of US $47.1m (£23.5m), due to the closure of its U.S. operations following the passing of the Unlawful Internet Gambling Enforcement Act (UIGEA). Total revenue for the group was down 68% to US$212.5m, compared with US$661.9m in the same period last year. **Exhibit 1**.

12. During hearings regarding the enforcement of the UIGEA on April 19, 2007, former Attorney General Alberto Gonzales promised Republican Arizona Senator Jon Kyl that he would do everything in his power to ensure the billion dollar industry has been quashed. **Exhibit 2,** Hartman, Robert, Staff Editor, *Alberto Gonzales Lies in Hearing About Internet Gambling*, www.CasinoGamblingWeb.com for July 24, 2007; **Exhibit 3,** Lawrence G. Walters, Weston, Garrou, DeWitt & Walters, www.GameAttorneys.com April 20, 2007.

13. We regularly check for information about our members' and industry companies' national and international business ventures to see if the UIGEA is having any real impact on Internet Gambling. A sample stock quotation taken on the afternoon of September 5, 2007 from Reuters [http://www.reuters.com] on the Internet for

PartyGaming, Ltd., a British Internet Gambling company showed that its stock decreased from a high of approximately $2.25 per share on the eve of adoption of the UIGEA to a present low of $0.59 per share. This appears to confirm that the value of shares of Internet Gambling concerns is directly related to the proscription of use of payment system instruments which would allow it to function. This appears to be international, not merely national, in scope.

14. In our research concerning the concept of filtering of Internet activities and in relation to the legislative history of the UIGEA, we determined that, at the request of Congress, the Government Accounting Office prepared a study of Internet Gambling regulation under the *Leach-LaFalce Internet Gambling Enforcement Act*, H.R. 556-2002 in 2002 entitled *Report to Congressional Requestors, Internet Gambling: An Overview of the Issues,* GAO-03-89 (December 2002). **Exhibit 4.** That report advised Congress that the major payment instrument systems such as banks and credit card companies already had filtering or coding in place to regulate Internet Gambling related transactions. The GAO also reported that law enforcement sources reported little concern with issues of money laundering and fraud.

15. Of course, the WTO dispute between Antigua and Barbuda and the United States is also of great interest to iMEGA, particularly because some members are international businesses facing ruin or prosecution. We monitor that controversy. On the official website of the United States Trade Representative, the United States committed itself to clarifying its WTO commitments in regard to the Internet Gambling WTO decision. John K. Veroneau, Deputy U. S. Trade Representative, issued a statement on May 4, 2007 which explicitly invokes the WTO to clarify its commitments. He stated

> The United States is invoking procedures under Article XXI of the General Agreement on Trade in Services (GATS) in order to clarify its commitment involving "recreational services," which was interpreted in the course of WTO dispute settlement as including a U.S. commitment to allow Internet gambling services.

Exhibit 5, Office of the United States Trade Representative, www.ustr.gov/Document_Library/Press Releases/2007, May 4, 2007.

16. The Internet Industry Association, www.iia.net.aus, an Australian Trade Association, published its Internet Industry-Interactive Gambling Industry Code: A Code for Industry Co-Regulation in the Area of Internet Gambling Content Pursuant to the Requirements of the Interactive Gambling Act of 2001 in December 2001. In 2001, the proposed self-regulating code contained Schedule 1-Scheduled Filters § (5), which listed fifteen (15) readily available commercial filters which had already been identified for the filtering of Internet gaming. **Exhibit 6,** *Internet Industry-Interactive Gambling Industry Code: A Code for Industry Co-Regulation in the Area of Internet Gambling Content Pursuant to the Requirements of the Interactive Gambling Act of 2001.*

17. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are found to be willfully false, I may subject to punishment.

Dated: ______________________

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EDWARD LEYDEN

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Dated: September 10, 2007

EDWARD LEYDEN